

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JONATHAN STEWART RODEN,

Petitioner,

v.

Case No. 2:09-cv-120
HON. R. ALLAN EDGAR

CATHY BAUMAN,

Respondent.

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MEMORANDUM AND ORDER

Petitioner Jonathan Stewart Roden, a Michigan state prisoner in the custody of the Michigan Department of Corrections, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner also made a motion for equitable tolling of the statute of limitations. [Doc. No. 3].

The case was referred to Magistrate Judge Timothy P. Greeley for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1(d). On August 5, 2009, the Magistrate Judge submitted his report and recommendation. [Doc. No. 9].

It is recommended that the habeas petition be denied and dismissed with prejudice on the ground that it is time-barred by the one-year statute of limitations in 28 U.S.C. § 2254(d)(1)(A). It is further recommended that the motion for equitable tolling of the statute of limitations be denied, and that the Court deny a certificate of appealability under 28 U.S.C. § 2253(c)(2).

Petitioner Roden has not timely filed objections to the report and recommendation. After

reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b).

Accordingly, the motion for equitable tolling of the statute of limitations [Doc. No. 3] is **DENIED**. The Court concludes that the 28 U.S.C. § 2254 habeas petition must be dismissed with prejudice for the reasons expressed in the report and recommendation. The petition for writ of habeas corpus brought under 28 U.S.C. § 2254 shall be **DENIED and DISMISSED WITH PREJUDICE** on the ground that it is time-barred by the one-year statute of limitations in 28 U.S.C. § 2254(d)(1)(A).

If petitioner Roden files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be **DENIED** pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) for the reasons expressed in the report and recommendation. Reasonable jurists could not find it debatable whether all of the petitioner's habeas claims have been properly dismissed on the ground that they are time barred the statute of limitations in 28 U.S.C. § 2254(d)(1)(A).

A separate judgment will enter.

SO ORDERED.

Dated: September 1, 2009.

/s/ R. Allan Edgar

R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE